Remarks

Claims 1-15 are pending in the present application. Reconsideration of the claims is respectfully requested. Claim 1 has been amended to better reflect the intent of the claimed invention. No new claims have been added.

I. 35 U.S.C. §102(b), Anticipation

The Examiner has rejected claims 1-15 under 35 U.S.C. §102(b) as being anticipated by Earle et al (Food product development). This rejection is respectfully traversed.

In rejecting the claims, the Examiner writes:

> Earle et al teach food product development comprising identifying a demographic group (e.g. culture, region, country), identifying flavors familiar to the groups (e.g. wine, vegetables, cake), identifying a desired concept for product development (e.g. snack foods, salsa), using the knowledge obtained to develop a product for the selected demographic group.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994).

A close reading of Earle et al shows that it fails to teach all of the elements of claim 1. For example, Earle et al fails to teach the claimed limitations of identifying a demographic group before developing a product for that demographic group. Earle et al recognizes that demographics play a role in food choice, but the approach taught fails to focus on tailoring product development with a specific demographic group in mind. Rather, the approach is aimed at developing an international product that appeals to multiple demographic groups (see pages 213-214). The presently claimed invention focuses on flavors that are appealing to a specific demographic group, and then develops a product incorporating those flavors. The developed product can then be marketed to those groups.

Further, Earle et al fails to teach identifying flavors familiar to specific demographic groups. Earle et al recognizes that certain foods are symbols for specific groups or occasions, such as wine for Christians, artistically cut vegetables for Thailand, and wedding cakes for

marriage (see page 216). Unlike the claimed limitation which requires identifying at least one flavor driver that supports the product concept, Earle et al does not pinpoint flavors that resonate with a particular group.

Earle et al discloses what is best described as the top-down approach. A company brainstorms product ideas, with limited consumer input, and then develops a preliminary product (see pages 224-227). Under the disclosure of Earle, a company uses consumer tests and surveys to determine the target market for the new product and which product characteristics to optimize only after the product has proceeded through initial development (see pages 228-230). In contrast, the present invention claims a bottom-up approach. A specific demographic group is chosen, research is done to determine what flavors resonate most with the chosen group, a product concept is developed, and consumers from the chosen group test the product concept. As opposed to developing a product that will reach a wide market and choosing where to market it once the product is developed as Earle et al teaches, the claimed invention develops a product for a specific group in a specific market. Though target consumers are involved in both approaches, Earle et al fails to teach or suggest tailoring the food development process to meet the needs and wants of a specific demographic group.

Because claims 2-15 depend upon claim 1, they are distinguished from Earle et al for the reasons given above.

Therefore, it is respectfully asserted that the rejection of claims 1-15 under 35 USC §102 has been overcome and should be withdrawn.

II. 35 U.S.C. §103, Obviousness

The Examiner has also rejected claims 1-15 under 35 U.S.C. § 103(a) as being unpatentable over Earle et al (Food product development). This rejection is also respectfully traversed.

A reference may be said to "teach away" from the claimed invention when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the references, or would be led in a direction divergent from the path that was taken by the applicant. *In re Gurley*, 27 F.3d 551, 553, 31 U.S.P.Q.2d 1130, 1131 (Fed Cir. 1995).

Earle et al discloses what is best described as the top-down approach. A company

brainstorms product ideas, with limited consumer input, and then develops a preliminary product (see pages 224-227). Earle et al states:

> "They [consumer groups] can develop ideas when little is known about a product area, and investigate the trade-offs the consumers are making. ... Observing the behavior of consumers ... can also generate ideas for new products. ... The consumer groups also screen the new product ideas." (page 227)

Once the product has proceeded through initial development, the company uses consumer tests and surveys to determine the target market for the new product and which product characteristics to optimize. Earle et al states:

"When more quantitative data are needed, for example in determining the target market and predicting the sales to the target market, a consumer survey using a randomly selected sample of the population is needed. ... Development of the product concept and the product design specifications ...[includes] consumers ...identifying the product attributes important to them in the product." (pages 228-230)

In contrast, the present invention claims a bottom-up approach. A specific demographic group is chosen, research is done to determine what flavors resonate most with the chosen group, a product concept is developed, and consumers from the chosen group test the product concept. As opposed to first developing a product that will reach a wide market and then choosing where to market it once the product is developed as Earle et al teaches, the claimed invention first determines the specific group and then develops a product tailor made for that group. Though target consumers are involved in both approaches, Earle et al fails to teach or suggest tailoring the food development process to meet the needs and wants of a specific demographic group. A person of ordinary skill in the art following the teachings of Earle et al (a top-down approach) would not take the approach presently claimed bottom-up approach, so the claimed invention is not obvious in view of Earle et al.

Further, all limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). In comparing Earle et al to the claimed invention to determine obviousness, limitations of the presently claimed invention may not be ignored.

The present invention in claim 1 recites identifying a demographic group and developing a product for that demographic group. Such a feature is not taught by Earle et al. As stated

above, Earle et al recognizes that demographics play a role in food choice, but the approach taught fails to focus on tailoring product development with a specific demographic group in mind. In fact, the emphasis of the impact that demographic groups play in making food choices in Earle et al is to highlight obstacles to developing a food product that is accepted by many groups (see pages 213-214). Instead of identifying a specific demographic group to develop a food product for (a bottom-up, consumer-oriented approach), Earle et al teaches a top-down approach of developing a food product that will be internationally accepted by many different demographic groups. In the presently claimed invention, a specific demographic group is first chosen, and then a food product is developed specifically for that group. Therefore, claim 1 is not obvious in view of Earle et al.

Claim 1 of the claimed invention further recites identifying at least one flavor driver familiar to the chosen demographic group. Earle et al recognizes that certain foods are symbols for specific groups or occasions, such as wine for Christians, artistically cut vegetables for Thailand, and wedding cakes for marriage. But unlike the claimed invention, Earle et al does not pinpoint specific flavors that resonate with a particular group, only foods and drinks that symbolize groups. The Examiner states that the identification of flavor drivers is obvious to that of Earle et al as all attributes are considered in product development including descriptive sensory analysis. However, Earle et al teaches focusing appealing attributes in the food product through consumer testing after the product has been conceptualized, where as the presently claimed invention identifies flavors that appeal to a specific group of consumers prior to product development and designs the food product to incorporate those flavors.

If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); MPEP 2143.03. Because claims 2-15 depend upon claim 1, they are distinguished from Earle et al for the reasons given above.

Therefore, it is respectfully asserted that the rejection of claims 1-15 under 35 USC §103 has been overcome and should be withdrawn.

Conclusion

If there are any outstanding issues that the Examiner feels may be resolved by way of telephone conference, the Examiner is invited to call Colin Cahoon or Chad Walter at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

The Commissioner is hereby authorized to charge any payments that may be due or credit any overpayments to CARSTENS & CAHOON, LLP Deposit Account 50-0392.

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Respectfully submitted,

Chad E. Walter
Registration No. 54,625
CARSTENS & CAHOON, LLP
P.O. Box 802334
Dallas, TX 75380
(972) 367-2001
(972) 367-2002 Fax